



December 28, 1999

Ms. Esther L. Hajdar
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR99-3786

Dear Ms. Hajdar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130624.

The University of Texas at San Antonio ("UTSA") received a request for all documentation related to a complaint of sexual harassment. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You state that in response to the request, UTSA has provided the requestor with a copy of the Summary Investigation and Recommendation memorandum containing conclusions of the complaint investigation and recommendations, the complainant's statement¹ and the accused's response to the allegation. However, you claim that the witness statements contain detailed information which, upon reasonable investigation, could identify the witness. Therefore, you argue that the witness statements in their entirety are protected by common-law privacy. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 incorporates the common-law right of privacy which excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). Although information relating to an internal investigation of sexual harassment claims involving public employees may be highly intimate or embarrassing, the public

¹As for the complainant's statement, we note that section 552.023 of the Government Code provides a person a special right of access to records held by a governmental body that contain information relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interests. Thus the complainant's statement may be released in this instance.

generally has a legitimate interest in knowing the details of such an investigation. Open Records Decision No. 444 (1986).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the right of common-law privacy to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

When there is an adequate summary of the investigation, the summary must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. As UTSA has released the Summary Investigation and Recommendations memorandum and the accused's statement, we agree that the witness statements must be withheld from disclosure under section 552.101 in conjunction with the common-law right of privacy.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

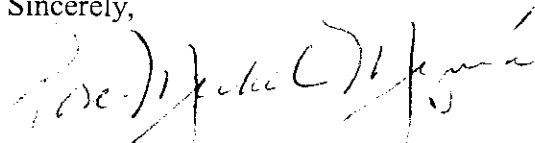
² In this case, UTSA agreed to maintain the confidentiality of the records at issue to the extent permitted by state law. Generally, governmental bodies are prohibited from entering into contracts to keep information confidential. Open Records Decision Nos. 514 (1988), 484 (1987), 479 (1987). The Public Information Act requires the release of all information held by governmental bodies unless one of the act's specific exceptions protects the information from required disclosure. *Id.* Unless a governmental body is explicitly authorized to make an enforceable promise to keep information confidential, it may not make such a promise. Open Records Decision 114 at 1(1975). UTSA may not withhold the requested information in this instance based on the confidentiality agreement.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/jc

Ref: ID# 130624

Encl. Submitted documents

bcc:

(w/o enclosures)